International Longshoremen's Association, Local 1180, AFL-CIO *and* Kenneth E. Mason. Case 15-CB-2535

September 8, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 18, 1982, Administrative Law Judge Richard L. Denison issued the attached Decision in this proceeding. Thereafter, the General Counsel filed a limited exception and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exception and brief and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, International Longshoremen's Association, Local 1180, Lake Charles, Louisiana, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

[2] The General Counsel has excepted only to the Administrative Law Judge's failure to recommend a broad cease-and-desist order against Respondent. In support of her contention that such an order is warranted because of a proclivity on the part of Respondent to violate the Act, the General Counsel asserts that, in July 1980 and October 1981, Respondent entered into informal settlement agreements involving alleged misconduct identical to that found to be unlawful in the instant case.

We find no merit in the General Counsel's exception. Informal settlement agreements do not provide a basis for finding a proclivity to violate the Act. *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (H. A. Carney and David Thompson, Partners, d/b/a C & T Trucking Co.)*, 191 NLRB 11 (1971). See also *Tri-State Building and Construction Trades Council, AFL-CIO (Structures, Inc.)*, 257 NLRB 295 (1981).

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to refer Kenneth E. Mason for employment in his rightful order of priority on the seniority list, for discriminatory reasons.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their Section 7 rights guaranteed them under the Act.

WE WILL reimburse Kenneth E. Mason for all pay he lost as a result of our discriminating against him when we did not dispatch him to available jobs, with interest.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1180, AFL-CIO

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge: This case was heard in Lake Charles, Louisiana, on April 28, 1982, based on a charge filed November 13, 1981, and a complaint issued on December 22, 1981, alleging a violation of Section 8(b)(1)(A) and (2) of the Act. The General Counsel contends that Respondent failed and refused to refer Kenneth E. Mason for available work through its exclusive referral arrangement with Lake Charles Stevedores, Inc., because he failed to pay a fine imposed on him by Respondent on December 15, 1980.

The parties waived the filing of briefs. Upon the entire record, including consideration of the parties' oral arguments and observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and the answer, as amended, admits that Lake Charles Stevedores, Inc. (herein called the Company), is a corporation licensed to do, and doing, business in the State of Louisiana. The Company is engaged in the business of providing stevedoring services at the port of Lake Charles, Louisiana, the only facility involved herein. During the preceding 12 months, a period representative of all times material herein, the Company, in the course and conduct of its business operations at its facilities located at the port of Lake Charles, Louisiana, received revenues in excess of $50,000 for the performance of stevedoring services for various transportation enterprises. Each of these enterprises is engaged in transportation operations constituting a link in the chain

of interstate and foreign commerce, from which operations each derives a gross revenue in excess of $50,000. I find that the Company is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

I find that Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. AGENCY

The complaint alleges and the answer, as amended, admits that, at all times material herein, the following individuals have been, and are now, agents of Respondent within the meaning of Section 2(13) of the Act: Clarence Broussard, executive board member; A. B. Coleman, union district executive board member; A. Frazier, executive board member; Ed Goins and Walter Kennedy, members; Paul Lavallier and James Moore, executive board members; Eddie Lee Mormon, business agent; —— Rushing, president of the Lake Charles District Local; R. M. Taylor, financial secretary, Louis Thomas, president; and L. E. Williams, executive board member.

IV. THE UNFAIR LABOR PRACTICES

It is admitted that on or about October 1, 1977, the Company and Respondent entered into, and since said date have continuously maintained and enforced, an agreement providing, *inter alia*, that Respondent is to be the sole and exclusive source of referrals of employees for work with the Company.

According to the credited testimony of Kenneth E. Mason, it was customary for those seeking work through the hiring hall to report to the union hall at 603 North Blake in Lake Charles 1 hour before time to report to the job.[1] There the men were selected by the foreman in order of classification and seniority as shown on their classification cards. Thus, holders of Class A cards would be hired before those holding cards designated Class B, C, and D. Furthermore, within a given classification, for example, the holder of a A-1 card would be hired before a person holding an A-12. Mason held card D-50, and until 1981, when work was available, Mason had never failed to be referred under this system in accordance with employers' needs.

On or about December 11 or 12, 1979, Mason had a fight with Joe Grey in a parking lot near the hall. Thereafter, both men were brought before the executive board of Local 1180 for a hearing. Both men were disciplined. Mason received 2 weeks with no work, while Grey received only 1 week. This was the second fight involving Mason to come to the attention of local union officials. At the end of the hearing Mason persisted in vehemently arguing after the executive board's decision was rendered. The argument became heated and prolonged and Louis Thomas, president of the Local and chairman of the board, attempted to enforce order and conclude the meeting by levying progressively greater fines on Mason. The more Mason persisted in heatedly continuing his protestations, the more he was fined. At the conclusion of the argument Mason owed $685 in fines.

The Union's recording secretary, James O. Moore, and Business Agent Eddie Lee Mormon conceded that it had long been the Union's "policy" and "standard procedure" that all fines were to be paid before an individual would be referred for work. At one point in his testimony Mormon described this as "the law of the Local." Accordingly, Mason ceased seeking work through Local 1180, and during the remainder of 1979 sought work as an unclassified employee out of ILA Local 1214 in Lake Charles. However, this means of obtaining employment ceased abruptly around Christmas 1979. Mason was told by a Local 1214 official he could not obtain further work because Local 1180's president had called and insisted Mason not be referred because he had not paid his fine. Mason became unemployed. In June 1980 he wrote a letter concerning his situation to Rasberry, president of the Union's South Atlantic Gulf Coast District. A district representative was sent to review Mason's case, but at the conclusion of the investigation Mason was told that he could not work if he did not pay his fine.[2]

The parties stipulated that on June 24, 1980, the Local Union entered into a settlement with the Board's Regional Office in a case involving an employee named Bernell Peters, who had been denied work pending payment of a fine. It is also undisputed, in accordance with the credited testimony of Local 1180 member Edward Goins, that Goins had received similar treatment. It is not altogether clear in the record whether Goins' situation was dealt with in the Peters case. Nevertheless, a notice was posted in the Local union hall disavowing further enforcement of the discriminatory policy. The evidence shows, however, that in practice the policy was continued.

In August 1980, Mason wrote to Thomas, and offered to pay his fine in installments. The proposed arrangement was that Mason would pay $100 initially, and $50 per month until the entire amount was paid. At a meeting between Mason and Thomas agreement was reached on this basis, and Mason paid his first installment of $100. Thereafter, between August 1980 and June 1981, by which time Mason was once again in arrears, the only period during which he was not referred and did not work was between September and part of December 1980, when he was unable to work because of an injury.

Mason's continued employment without having paid his fine became an issue in early June, when it was raised at the Local's monthly membership meeting. According to credited testimony by Edward Goins, who attended, Richard Taylor, then the treasurer, asked why members of the Local were having to pay their fines before going to work, when Mason, who did not belong to the Local, had not paid but was working. A motion was then made, seconded, and carried, that Mason pay his fine before going to work. Goins remembered President Louis Thomas stating ". . . point blank he [Mason] had to pay a fine before he went to work; simple as that." Further-

[1] Mason answered questions in a direct and candid manner without hesitation or attempted evasion.

[2] No district representative testified.

more, Goins specifically stated that no union official reminded the membership of the Bernell Peters settlement in which the Union agreed to no longer enforce the rule that fines had to be paid before anyone was referred to work.

Louis Thomas agreed that at one time it had been the policy of the Local that fines must be paid before going to work, but insisted that the policy had been changed as a result of the Peters case. He denied ever telling Mason that he could not work until his fine was paid, and claimed that he told him "one day at the hall" to come back to work at the end of his 2 weeks' suspension. Thomas claimed that Mason told the district representative he had a job and did not want to work. Thomas also insisted that he tried to explain to the membership at the June meeting that they could not stop Mason from working because of the fine, and asserted that, although the motion concerning Mason was made and seconded, the minutes of the meeting reveal that the motion was never carried. I have not credited the testimony of Thomas where it differs in significant respects from that of Mason and Goins. Thomas impressed me as a witness interested only in exonerating himself from any possible blame which might result from the handling of the Mason case. Accordingly, he testified that a day or so after the June meeting he "explained" to Recording Secretary James O. Moore, who attended the meeting and wrote the minutes, that the motion had not carried, because he thought there would be NLRB charges and he wanted to be sure Moore made a notation of it in the minutes. Thereafter, Moore reported that he had made an additional notation in the minutes in a different colored ink. At another point in his testimony Thomas denied that he told Moore to change the minutes. These minutes, complete with the changes in different colored ink, are in evidence. On the other hand, Moore denied changing the minutes, but insisted that the notations in different colored ink were made during the union meeting because he knew there would be a controversy concerning the Mason affair. I find this assertion likewise incredible since Moore and Thomas do not agree among themselves concerning their discussion of the Mason incident. As noted earlier, Thomas claimed to have told Moore a day or so after the meeting to be sure to make a notation in the minutes to the effect that the motion was not carried and that later Moore reported that he had made an additional notation. However, Moore insisted that the only discussion he had with Thomas was when Thomas told him to get the minutes "ready" for Thomas (to use during the NLRB investigation of Mason's case) and to check to see that the minutes showed that Thomas had said he could not enforce a motion which had been made with respect to Mason.[3]

[3] Although I have found that the minutes of the June membership meeting were in fact altered thereafter by Moore pursuant to Thomas' instructions, this facet of this case is significant mainly because it affects the credibility of Thomas and Moore, since the testimony of Business Agent Eddie Lee Mormon, discussed below, clearly established the continued existence and enforcement, during the period in question, of Respondent's longstanding discriminatory policy concerning the payment of fines before working.

On July 31 Mason made a final payment of $385 to Mormon who then stated that Mason "could go to work tomorrow." According to Mason, "that was the end of it." At the hearing the parties stipulated concerning specific dates and jobs during the months of June and July when work was performed by crews which included men junior in seniority to Mason. It is unnecessary to set this lengthy stipulation here.

The testimony of Respondent's final witness, Business Agent Eddie Lee Mormon, standing alone, is dispositive of the issue presented. Mormon testified that the Local's policy concerning the payment of fines had not been changed, and that the motion concerning Mason at the June membership meeting was made and carried. Thereafter he told Mason that "he had to pay his fine, you know, before he go to work; you know pay on his fine, you know somewhere in that category, you know." Mormon stated that Thomas had never told him that the Local was going to change its policy regarding fines. He called that policy "the law of the Local." Then, in response to counsel for the General Counsel's question concerning whether or not he had ever been informed by Thomas about changing the Local's policy regarding forcing the payment of fines before making referrals, Mormon delivered the following lecture:

> No, never—not on that issue; I never had talked with him on that issue, you know what I mean? Because see, I—see, I was sticking to the old part of the membership from way back, see. I didn't have nary a copy of this new ruling until Mr. Bernell Peters had a case here, I believe, some kind of way with the NLRB, and then that's when one of the NLRB men gave me a copy of this document of what, why you can't stop a man, and stuff like that.
>
> I also told one NLRB man, I said, "It look like you all are not for labor. We—we have a good policy, and it look like everything work good, and when you start coming in and letting a man pay like they want, do like they want, you're going to have this all the time."
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> And I said, I just told one, I said, "You're just trying to destroy organized labor."

During his testimony Mormon repeatedly stated either that he had told Mason he must pay his fine before working, or that he must pay "on" his fine before going to work. Finally, Mormon asserted that he had offered Mason employment during the summer of 1981. He could not, however, remember any specific instance in which this had been done. Mason denied either that he had been offered or had refused employment during that time. I credit Mason.

Since it is clear, based on the credited testimony of Mason and Goins, and the admissions of Business Agent Mormon, that Kenneth E. Mason was not referred for work during June and July 1981 because of Respondent's policy against referring individuals who had not paid their internal union fines, at a time when work was available and employees less senior to Mason did in fact work, I find that Respondent violated Section 8(b)(1)(A) and (2) of the Act. *Local 1437, United Brotherhood of*

Carpenters and Joiners of America, AFL-CIO (Associated General Contractors of California, Inc., et al.), 210 NLRB 359 (1974); *United Brotherhood of Carpenters and Joiners of America, Local #1913, AFL-CIO (Associated General Contractors of California, Inc., et al.)*, 189 NLRB 521 (1971).

CONCLUSIONS OF LAW

1. Lake Charles Stevedores, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Longshoremen's Association, Local 1180, AFL-CIO, Respondent, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to refer Kenneth E. Mason because of his failure to pay a fine levied against him, Respondent engaged in a discriminatory hiring hall practice in violation of Section 8(b)(1)(A) and (2) of the Act.

4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall order that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

Since I have found that Respondent refused to refer Kenneth E. Mason for work, which was available to individuals at his seniority level, during the period on or about June 1, 1981, to on or about the beginning of August, as alleged in the complaint, I shall recommend that Respondent be ordered to make him whole for any loss of earnings he may have suffered as a result of the discrimination against him, in accordance with the principles set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[4]

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[5]

The Respondent, International Longshoremen's Association, Local 1180, AFL-CIO, Lake Charles, Louisiana, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to refer Kenneth E. Mason for employment in his rightful order of priority on the seniority list of Respondent's hiring hall for reasons unconnected with a failure to tender and pay periodic dues, registration fees, and initiation fees uniformly required as a condition of acquiring or maintaining membership in the Union, or as a condition required for using Respondent's exclusive hiring hall system.

(b) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Notify Kenneth E. Mason, in writing, that it will not refuse to refer him for work in his rightful order of priority.

(b) Make whole Kenneth E. Mason for any loss of earnings suffered because of the discrimination against him, in accordance with the section of this Decision entitled "The Remedy."

(c) Post at its offices, meeting halls, and hiring halls copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[4] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[5] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."